

CLAUSE I-134 – TERMINATION (COST-REIMBURSEMENT) (August 2002)

- (a) SURA may terminate performance of work under this subcontract in whole or, from time to time, in part, if –
 - (1) The Subcontracting Officer determines that a termination is in SURA or the Government's interest; or
 - (2) The Subcontractor defaults in performing this subcontract and fails to cure the default within 10 days (unless extended by the Subcontracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) The Subcontracting Officer shall terminate by delivering to the Subcontractor a Notice of Termination specifying whether termination is for default of the Subcontractor or for convenience of SURA, the extent of termination, and the effective date. If, after termination for default, it is determined that the Subcontractor was not in default or that the Subcontractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of SURA.
- (c) After receipt of a Notice of Termination, and except as directed by the Subcontracting Officer, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the subcontract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to SURA, as directed by the Subcontracting Officer, all right, title, and interest of the Subcontractor under the subcontracts terminated, in which case SURA shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the Subcontracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this subcontract; approval or ratification will be final for purposes of this clause.
 - (6) Transfer title (if not already transferred) and, as directed by the Subcontracting Officer, deliver to SURA (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to SURA, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this subcontract, the cost of which the Subcontractor has been or will be reimbursed under this subcontract.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that the Subcontracting Officer may direct, for the protection and preservation of the property related to this subcontract that is in the possession of the Subcontractor and in which SURA has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by the Subcontracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; provided, however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Subcontracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by SURA under this subcontract, credited to the price or cost of the work, or paid in any other manner directed by the Subcontracting Officer.
- (d) The Subcontractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Subcontracting Officer upon written request of the Subcontractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Subcontractor may submit to the Subcontracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Subcontracting Officer. The Subcontractor may request SURA to remove those items or enter into an agreement for their storage. Within 15 days, SURA will accept the items and remove them or enter into a storage agreement. The Subcontracting Officer may

verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

- (f) After termination, the Subcontractor shall submit a final termination settlement proposal to the Subcontracting Officer in the form and with the certification prescribed by the Subcontracting Officer. The Subcontractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Subcontracting Officer upon written request of the Subcontractor within this 1-year period. However, if the Subcontracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Subcontractor fails to submit the proposal within the time allowed, the Subcontracting Officer may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) of this clause, the Subcontractor and the Subcontracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The subcontract shall be amended, and the Subcontractor paid the agreed amount.
- (h) If the Subcontractor and the Subcontracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Subcontracting Officer shall determine, on the basis of information available, the amount, if any, due the Subcontractor, and shall pay that amount, which shall include the following –
 - (1) All costs reimbursable under this subcontract, not previously paid, for the performance of this subcontract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Subcontracting Officer; however, the Subcontractor shall discontinue those costs as rapidly as practicable.
 - (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subparagraph (h)(1) of this clause.
 - (3) The reasonable costs of settlement of the work terminated, including –
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Subcontractor's termination settlement proposal may be included.
 - (4) A portion of the fee payable under the subcontract, determined as follows:
 - (i) If the subcontract is terminated for the convenience of SURA, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the subcontract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.
 - (ii) If the subcontract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by SURA is to the total number of articles (or amount of services) of a like kind required by the subcontract.
 - (5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.
- (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this subcontract, shall govern all costs claimed, agreed to, or determined under this clause. (j) The Subcontractor shall have the right of appeal, under the Disputes clause, from any determination made by the Subcontracting Officer under paragraph (f), (h) or (l) of this clause, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Subcontracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, SURA shall pay the Subcontractor (1) the amount determined by the Subcontracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.
- (j) In arriving at the amount due the Subcontractor under this clause, there shall be deducted –
 - (1) All unliquidated advance or other payments to the Subcontractor, under the terminated portion of this subcontract;
 - (2) Any claim which SURA has against the Subcontractor under this subcontract; and

- (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Subcontractor or sold under this clause and not recovered by or credited to SURA.
- (k) The Subcontractor and Subcontracting Officer must agree to any equitable adjustment in fee for the continued portion of the subcontract when there is a partial termination. The Subcontracting Officer shall amend the subcontract to reflect the agreement.
- (l) (1) SURA may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract, if the Subcontracting Officer believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to SURA upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Subcontracting Officer because of the circumstances.
- (m) The provisions of this clause relating to fee are inapplicable if this subcontract does not include a fee.

Alternate IV . If the subcontract is a time-and-material or labor-hour subcontract, substitute the following paragraphs (h) and (l) for paragraphs (h) and (l) of the basic clause:

- (h) If the Subcontractor and the Subcontracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Subcontracting Officer shall determine, on the basis of information available, the amount, if any, due the Subcontractor and shall pay the amount determined as follows:
 - (1) If the termination is for the convenience of SURA, include –
 - (i) An amount for direct labor hours (as defined in the Schedule of the subcontract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Subcontractor;
 - (ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Subcontractor;
 - (iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the Subcontracting Officer; however, the Subcontractor shall discontinue these expenses as rapidly as practicable;
 - (iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the subcontract; and
 - (v) The reasonable costs of settlement of the work terminated, including –
 - (A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.
 - (2) If the termination is for default of the Subcontractor, include the amounts computed under subparagraph (h)(1) of this clause but omit –
 - (i) Any amount for preparation of the Subcontractor's termination settlement proposal; and
 - (ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by SURA.
- (i) If the termination is partial, the Subcontractor may file with the Subcontracting Officer a proposal for an equitable adjustment of the price(s) for the continued portion of the subcontract. The Subcontracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the Subcontracting Officer.

